



RETURN-TO-WORK 101

**Workers' Compensation Processes
& Disability Management
Exposures and Recommendations**

THE CALIFORNIA WORKERS' COMPENSATION (WC) SYSTEM

- **Established to provide the exclusive remedy for industrially injured employees, irrespective of fault.**
- **Established to provide industrially injured employees with medical treatment and a variety of other benefits.**
- **Established to provide an arena to resolve disputes.**

WC BASIC PURPOSE

- **Ensure that an employee, who sustains an industrial injury, and those that depend upon the employee for support, will have a means of support.**
- **Ensure that reasonable medical treatment is provided to cure or relieve effects of the injury.**

WC BASIC PURPOSE

- **Ensure an employee who sustains an industrial injury is monetarily compensated for any permanent disability.**
- **Ensure that an industrially injured employee who cannot return to his or her usual job is vocationally rehabilitated/retrained. (Injuries before 01/01/2004)**

WC BASIC PURPOSE

- **Ensure that the dependents of an employee who dies as a result of an industrial injury will be provided with compensation and a burial allowance.**
- **Ensure that his or her employer does not discriminate against an employee who sustains an industrial injury.**

WC MEDICAL-LEGAL

- **Primary Treating Physician – The doctor who is responsible for managing overall care and who writes medical reports that may affect benefits.**
- **QME – A doctor select from a list provided by the state Division of Workers' Compensation to conduct a medical examination and prepare a medical-legal report to help resolve a dispute.**
- **AME- A doctor who is selected by agreement between the injured worker's attorney and defense attorney to help resolve a dispute.**

SB 863

- **Impact on RTWCs**
- **For injuries on or after 1/1/2013 the 15% permanent disability increase or decrease is removed (see LC 4658). For injuries before 1/1/2013, there is still the requirement to complete the DWC AD 10118 or the DWC AD 10133.53. For all dates of injuries – document job offers and interactions.**
- **http://www.dir.ca.gov/dwc/Laws_Regulations.htm**

SB 863

- **Impact on RTWCs**
- **For injuries on or after 1/1/2013, if the injury causes permanent partial disability the employee shall be entitled to the SJDB unless an offer of regular, alternate, or modified work is made no later than 60 days after the claims administrator receives the first report from the PTP, AME, or QME finding disability of from all conditions claimed has become permanent and stationary. (See LC 4658.7 and DWC AD 10133.35)**
- **<http://www.dir.ca.gov/dwc/forms.html>**

LATE REPORTING EXPOSURES

- **May increase cost due to lost investigation and denial opportunities (LC 5402(b)).**
- **May increase medical treatment costs incurred because the denial decision is delayed (LC 5402(c)).**
- **May subject the employer to a 10% increase in indemnity costs (LC 4650).**

Fraud and Abuse

- **Elements of Workers' Compensation Fraud – “The Lie”**
- **Working while collecting wc time-loss benefits** – outside employment form
- **Symptom magnification** – Telling a physician you cannot perform tasks you can perform.
- **Surveillance**
- **Fraud Reporting:**
- **wcantifraud@ceo.lacounty.gov**
- **County Fraud Hotline (800) 544-6861**
- **Hotline@auditor.lacounty.gov**

LABOR CODE 132a

- **It is the declared policy of the state that there shall be no discrimination against workers who are injured in the course and scope of their employment.**
- **Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement is guilty of a misdemeanor and the employee's compensation is increased by one-half, up to \$10,000. The employee shall also be entitled to reinstatement, lost wages, and work benefits.**
- **Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because the employee testified or made known his or her intentions to testify in another employee's case before the appeals board, is guilty of a misdemeanor, and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.**

Injured Workers' Experiences

An Evaluation of Services to
Inform and Assist Injured Workers in California
by Juliann Sum, Esq., M.S.
in consultation with Laura Stock, M.P.H.
July 1996

- **"No one gives you the full story, only parts."**
- **"When you want to go through the process, no one gives you a hand as to what to do [You're] completely on your own."**
- **"They only saw me as a number, they did not care about me as an individual."**
- **"I am not trying to screw anybody. I just want what's fair. And I was treated like some creepy-crawly thing that came out from under the rock: 'Don't give her anything. She's icky.'"**
- **"They catch some guy playing tennis on film. It's like 'Oh, all employees are lying.'"**
- **"Everyone wants a piece of the case, and he who least benefits is the worker."**
- **"It's really dehumanizing to have your fate decided by so many outside forces."**
- **"Initially, when I got hurt on the job, the supervisor took no notes, did nothing, and progressively I was getting lame."**
- **"It starts with the human factor, first of all--train people or the counselors or people in insurance to treat you as a human being."**

Division of Workers' Compensation Medical Unit

- **Statement on modified work:**
- **If medically feasible, the injured worker who is unable to return to regular duty should be placed in a modified work environment if it is suggested by the treating physician and, when practical, accommodated by the employer.**
- **A research of the relevant world literature, recently sponsored by the IMC, suggests that the availability of modified work has become increasingly important in accomplishing the goal of rehabilitating and returning the injured worker back to the work place. The study further suggests that the availability of modified work appears to have reduced employer costs because of more effective sustained return to work outcomes. The Industrial Medical Council would like to encourage the California workers' compensation community to consider joining us in promulgating the above concept.**

FEHA BASIC PURPOSE

- **Established to prohibit employment discrimination on the basis of physical disability, mental disability, and medical condition.**

FEHA BASIC PURPOSE

- **Ensure employers provide reasonable accommodations for those employees who are unable to perform the essential job functions of their job because of disability.**
- **Ensure employers engage in a timely, good faith interactive process with employees with disabilities to determine effective reasonable accommodations.**



THAT MEANS WORKERS' COMPENSATION CLAIMS MAY RESULT IN OBLIGATIONS UNDER FEHA!

- **Do practice sound disability management by attempting to return the injured worker back to work as soon as possible.**
- **Do contact the injured worker regularly to address return-to-work efforts and the need for interactive process meetings (IPMs).**
- **Do work with the injured worker's supervisor to address reasonable accommodations and essential job functions in an effort to return the injured worker to suitable productive employment.**
- **Do document all efforts and communications.**



ADDRESS RESPONSIBILITIES UNDER FEHA!

**DO NOT WAIT FOR
WORKERS' COMPENSATION
ISSUES TO BE RESOLVED
BEFORE ATTENDING TO
FEHA OBLIGATIONS!**

**SEARS, ROEBUCK TO PAY \$6.2 MILLION FOR DISABILITY BIAS
FEDERAL COURT APPROVES LARGEST MONETARY AMOUNT EVER
IN SINGLE EEOC ADA SUIT; EMPLOYEES ALLEGEDLY TERMINATED
BASED ON INFLEXIBLE WORKERS' COMPENSATION LEAVE
EXHAUSTION POLICY**
9-29-09

Regional Attorney John Hendrickson of the EEOC Chicago District Office said pre-trial discovery in the lawsuit revealed that hundreds of other employees who had taken workers' compensation leave were also terminated by Sears without seriously considering reasonable accommodations to return them to work while they were on leave, or seriously considering whether a brief extension of their leave would make their return possible.

"The era of employers being able to inflexibly and universally apply a leave limits policy without seriously considering the reasonable accommodation requirements of the ADA are over," Hendrickson said. "Just as it is a truism that never having to come to work is manifestly not a reasonable accommodation, it is also true that inflexible leave policies which ignore reasonable accommodations making it possible to get employees back on the job cannot survive under federal law. Today's consent decree is a bright line marker of that reality."



WHAT SHOULD AN ORGANIZATION DO (WC)?

- **Ensure industrial injuries or illnesses are reported as soon as possible and with as much detail as possible.**
- **Ensure the cause of industrial injuries or illnesses are investigated and prevention measures implemented, if possible.**
- **Expedite the provision of initial medical care.**
- **Be kind and helpful.**



WHAT SHOULD AN ORGANIZATION DO (WC)?

- **Establish sound workflow processes with the workers' compensation third party administrator.**
- **Schedule periodic workers' compensation claim reviews.**
- **Enlist assistance of CEO-RMB staff when needed.**
- **Be kind and helpful.**

WHAT SHOULD AN ORGANIZATION DO (RTW)?

- **Maintain well organized RTW files that document timely, respectful communication with an emphasis on complying with FEHA obligations.**
- **Contact the injured employee early and regularly (Document).**
- **Obtain work capacities and restrictions as soon as possible. Be on the look out for reasonable accommodation triggers (Document).**
- **Describe essential functions and usual duties of the job (Document).**

WHAT SHOULD AN ORGANIZATION DO (RTW)?

- **Research and evaluate possible accommodations (Document).**
- **Be kind and helpful.**
- **Select a reasonable accommodation and make an offer of work (Document).**
- **Implement and monitor the accommodation (Document).**
- **Know your roles!**



○ **Questions???**